IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-759

Whitman Area Improvement Council
Alice Moore, Fred Druding, and
All Members of the Whitman Area
Improvement Council and its
Officers, Agents, Servants,
Representatives and Employees
and All Other Persons Acting in
Consort with Them or Participating
in Their Aid,
Petitioners

v.

Resident Advisory Board, et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioners, the Whitman Area Improvement Council, Alice Moore, Fred Druding, and all members of the Whitman Area Improvement Council and its officers, agents, servants, representatives, and employees, and all other persons acting in consort with them or participating in their aid, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case on August 31, 1977.

CITATION TO OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania appears in the Appendix and is reported at 425 F. Supp. 987. The opinion of the Circuit Court of Appeals appears in the Appendix and is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered August 31, 1977. Rehearing was denied on September 26, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTION PRESENTED

Where the United States Department of Housing and Urban Development did not even consider environmental issues under

The National Environmental Policy Act and its own regulations, yet alone file a required statement prior to approving and funding a 120 unit public housing project did the Courts below err in authorizing its construction.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. §4321. Congressional declaration of purpose.

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

42 U.S.C. §4331. Congressional declaration of national environmental policy.

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental

quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may -

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national

heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

42 U.S.C. §4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall -

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with

the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unqualified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsibile Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal,

State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by subchapter II of this chapter.

STATEMENT OF THE CASE

The jurisdiction of the District Court was invoked under 28 U.S.C. §1343 (3)(4); 28 U.S.C. §1331; 28 U.S.C. §1361; and 43 U.S.C. §3612.

The Whitman Urban Renewal Area, (hereinafter called "W.U.R.A."), comprises an area of .32 square miles in South Philadelphia with a population of some thirteen thousand. The Petitioners are the Whitman Area Improvement Council, recognized by the United States Department of Housing and Urban Development, (hereinafter called "H.U.D."), and the Redevelopment Authority of the City of Philadelphia, (hereinafter called "R.D.A.") as the Project Area Committee in the Whitman Urban Renewal Area pursuant to H.U.D. Handbook 7387.1, Fred Druding and all others acting in consort with him, and all the citizens who live in said area, (hereinafter collectively called "Whitman"). Whitman was not originally a party to this litigation, but sought and was granted status as Defendants-Interveners.

During the period 1956 through 1960, the Philadelphia Housing Authority, (hereinafter called "P.H.A."), acquired by condemnation, and demolished some 250 single-family, row homes in a four block area in the W.U.R.A., (hereinafter called "Site") for a public housing project. During this same period, P.H.A. planned thereon, and H.U.D.'s predecessor's

approved and funded four high-rise apartment buildings with 496 units. Prior to the implementation of these plans, Congress enacted the Housing Act of 1964, 78 Stat. 769, which, in part, changed this project from a high to low-rise.

"High-rise elevator projects provide an undesirable environment for family living and should be developed for families with children only in those situations where site availability or cost considerations preclude the providing of housing which is more suitable for family life." House Report No. 1585, 1968 U.S. Code - Congressional and Administrative News 2903. The preclusion of the high-rise project in Whitman was the forerunner of the nation-wide prohibition against high-rise family projects contained in the 1968 Housing Act, 42 U.S.C. 1415 (11), which continues in effect.

P.H.A. and R.D.A. promulgated a joint request for proposals for this project in December, 1969. Twelve developers submitted turnkey proposals on March 4, 1970. P.H.A. chose Multicon as the developer on April 28, 1970 with H.U.D. concurrence on May 20, 1970. H.U.D. approved the entire project and the developer on October 27, 1970. Construction was to begin during the period late 1970 and continue through 1971. H.U.D. involvement was to continue twenty-five years post-ccnstruction due to the payments required by H.U.D. for interest and other expenses under the H.U.D.-P.H.A. Annual

Contributions Contract with regard to these project dwellings.

The proposed project consisted of 120 single, family, row homes with design and construction significantly dissimilar to 2,900 of the 3,000 Whitman Area homes. At 1971 prices, the construction cost of each home was in excess of $25,000.00. Upon completion of these homes, P.H.A. would enter into a Lease-Purchase Agreement with the occupants, who, pursuant thereto, would pay P.H.A. as little as $65.00 per month, which would include all repairs, gas, electricity, water and payments in lieu of real estate taxes.

After twenty-five years of such payments, P.H.A. would transfer fee-simple ownership to the occupant. In addition to the initial expenditure of some $25,000.00 per house of H.U.D. monies, there would be additional $25,000.00 per house of H.U.D. funds for interest during the said twenty-five year period. During this twenty-five year period, the occupant would pay some $19,500.00 for a $50,000.00 home, and would, in addition, have free repairs, free gas, free electricity, free water and sewer, with no real estate taxes during this entire period, at an estimated cost to H.U.D. of an additional $75.00 per month or $22,500.00 over twenty-five years. The twenty-five year cost to H.U.D. was $72,500.00. These project homes were available only to existing public housing tenants, none of whom were citizens of the W.U.R.A..

This type of public housing is called "Turnkey III" or "Home Ownership Opportunities Program for Low-Income Families (Hoplif)." For a factually detailed report on the failure of this type of project, see Report to the Congress, Problems in the Home Ownership Opportunities Program for Low-Income Families by the Comptroller General of the United States dated March 27, 1974 (B-171630). The Comptroller General's report held: "Many families were delinquent in making their required monthly payments"; that "families at six of the seven locations generally did not perform routine maintenance"; that "another indication that families were not responding to their home ownership and community responsibilities was the vandalism committed to common property in some of the Hoplif Housing Developments"; and that "many families have left the Hoplif Program."

P.H.A. projects in the City of Philadelphia are neither safe, decent, or sanitary, as required by 42 U.S.C. 1402. Prevailing physical conditions include public displays of feces, urine, filth, odors, graffiti, broken windows, unkept trash and garbage, disorderly lawns and lack of lighting. These projects are centers for gangs and other related violent activities. Drugs and the related drug cultural scene to include robberies, muggings and shootings are also prevalent in housing projects. These conditions have caused the P.H.A.

to create its own police force. For a vivid, current description of life at the project closest to the W.U.R.A. (some ten blocks away). which contains low-rises similar to those proposed to be constucted here see, "A Modest Apartment in Hell", Philadelphia Magazine, October, 1977.

There are some 3,000 homes in Whitman, 80 percent of which are owner-occupied. With the exception of some 100 homes built in the late 60s and early 70s, all the homes are pre-World War I construction, with an approximate 1971 value of $10,000.00. The citizens of Whitman pay their own mortgages, real estate taxes, gas, electricity, water and sewer, and make their own repairs. The citizens of Whitman work two jobs in order to pay for and maintain their $10,000.00 homes. They cannot afford a $25,000.00 home, nor are they eligible for these project homes.

Whitman's answer to Respondents' Second Amended Supplemental Complaint, pled, as a defense, that H.U.D., P.H.A. and R.D.A. had not filed the required Environmental Impact Statement, (hereinafter called "E.I.S.").

At trial, Petitioners proved that no E.I.S. nor any other environmental statement was ever prepared by H.U.D., P.H.A. and/or R.D.A.. The sole environmental data submitted was on May 1, 1974 by R.D.A. which stated: "The ground bounded by Front Street, the real property line of Second Street, Porter Street and

Oregon Avenue has been cleared and the Authority is awaiting a decision from the courts regarding the re-use and disposition of this land. Interest has been shown by a private developer developing this site for a hockey rink, and other sports facilities."

The District Court did not consider the environmental issues despite the uncontradicted evidence, in support of the pleading, that no environmental statement has ever been prepared yet alone submitted. The Court of Appeals refused to review the environmental issues holding that since they had not been raised below, they could not be considered on appeal.

REASONS FOR GRANTING THE WRIT

The decision herein emasculates the National Environmental Policy Act (hereinafter called "N.E.P.A."), conflicts with prior decisions of this Court, and is not in accord with and cannot be reconciled with prior decisions of the various Circuit Courts of Appeal.

N.E.P.A. was passed by the Senate on December 20, 1969, by the House on December 22, 1969, and signed by the President on January 1, 1970, becoming effective immediately. Among the purposes of this Act are: "To declare a national policy which will encourage productive and enjoyable harmoney between man and his environment... and stimulate the health and welfare of man." 42 U.S.C. 4321.

Congress, "recognizing the profound impact of man's activity on the interrelations of all components of the natural' environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resource exploitation and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declare[d] that it is a continuing policy of the Federal Government in cooperation with State and local governments, and all other concerned public and private organizations to use <u>all practical</u> means and measures, including financial

and technical assistance in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans." Congress further mandates that, "it is the continuing responsibility of the Federal Government to use all practical means, consistent with other essential considerations of national policy [to] assure for all Americans safe, helpful, productive, aesthetically and culturally pleasing surroundings." (My emphasis.) 42 U.S.C. 4331.

In Kleppe vs. Sierra Club, 427 U.S. 390 (1976), the Court held that N.E.P.A. announced a national policy of environmental protection and placed a responsibility upon the Federal Government to further specific environmental goals by 'all practical means consistent with other essential considerations of national policy...'" In Flint Ridge Development vs. Scenic Rivers Association of Oklahoma, 426 U.S. 776 (1976), the Court held that, "N.E.P.A.'s instructions that all federal agencies comply with the Impact Statement requirement - and with all other requirements of §102 - 'to the fullest extent possible'", 42 U.S.C. 4332, is neither accidental or hyperbolic. Rather, the phrase is of deliberate command that the duty N.E.P.A. imposes upon the agencies to consider environmental factors

not be shunted aside in the bureaucratic shuffle." The critical national importance of N.E.P.A. is also defined in Aberdeen and Rockfish R. Co. vs. Scrap, 422 U.S. 315 (197), which held that N.E.P.A. requires an agency to give a "hard look" at environmental issues. The First Circuit, in considering the national importance of N.E.P.A., held, "We cannot think of any stronger language which could have been used to underscore the importance of protecting the environment..." Silva vs. Romney, 473 F. 2d. 287 (1st Cir., 1973). The command of the appellate courts, the Congress and the President is that environmental considerations are of the highest national importance.

Environmental statements are required for on-going federal projects initiated prior to January 1, 1970, the effective date, which are likely to extend significantly into the future. Jones vs. Lynn, 477 F. 2d. 885 (1st Cir., 1970); Sierra Club vs. Froehlke, 359 Supp. 1289 (D.C. Texas, 1973); Save the Courthouse Committee vs. Lynn, 408 F. Supp. 1323 (S.D.N.Y., 1975). In December, 1969, the Congress enacted N.E.P.A.. In the same month, P.H.A. and R.D.A. promulgated a joint request for proposals for this project. P.H.A. chose a developer on April 28, 1970 and H.U.D. concurred therein on May 20, 1970. This H.U.D. concurrence was almost five months past the effective date of N.E.P.A., and one month subsequent

to the regulations promulgated by the Council on Environmental Quality (hereinafter called "C.E.Q."). H.U.D., during this five month period, did not, in any manner, even attempt to comply with N.E.P.A. or the C.E.Q. regulations as to this project. H.U.D., on October 27, 1970, approved the entire project obligating some three million dollars. In the same ten months post-N.E.P.A., H.U.D. had not even considered environmental issues relating to this project although it was the period of crucial Federal decisions thereon. Initial construction did not begin until December, 1970, some twelve months after the N.E.P.A. effective date. Again, H.U.D. did nothing. H.U.D. involvement in this project would continue for some twenty-five years post the effective date of N.E.P.A., therefore it is applicable.

The 1970 construction cost of this project was 2.9 million dollars, plus 3 million dollars in interest paid over twenty-five years, and an additional further contribution to maintenance over twenty-five years of 2.6 million dollars. The total federal expenditures would be 8.5 million dollars, This is a major federal action under N.E.P.A.. Smith vs. City of Cookville, 381 F. Supp. 100 (D.C. Tennessee, 1974), ($500,000.00); Samson Committee vs. Lynn, 382 F. Supp. 1245 (E.D. Pa., 1974), (one city block); and Trinity Episcopal School Corp. vs. Romney, 523 F. 2d. 88 (2nd Cir., 1975),

(revision from 160 units of middle income housing to 160 units of low income housing.)

N.E.P.A. "must be construed to include protection of the quality of life of city residents. Noise, traffic, overburdened mass transit systems, crime, congestion and even availability of drugs all affect urban environment." Trinity Episcopal School Corp. vs. Romney, 523 F. 2d. 88 (2nd Cir., 1975); Hanley vs. Mitchell, 460 F. 2d. 640 (2nd Cir., 1972). A social impact analysis is a requirement under 42 U.S.C. 4332. Hanley vs. Mitchell, supra.. "Hazardous urban and sub-urban growth, crowding, congestion, and conditions within our central cities which result in civil unrest and distract from man's social and physical well-being" are problems which the Federal Government must deal with under N.E.P.A.. Report of Senate Committee on Interior and Insular Affairs, 115 Cong. Rec. 40417 (1969).

H.U.D. must consider whether the proposed action could lead 'ultimately [to] both economic and physical deterioration in the.....community - or contribute to an atmosphere of urban decay and blight making environmental repair of the surrounding area difficult if not impossible." City of Rosedale vs. U.S. Postal Service, 541 F. 2d. 967 (2nd Cir., 1976).

There had been substantial questions raised prior to 1970 and continuing thereafter as to the effect of this project on the W.U.R.A.. All P.H.A. projects in Philadelphia have lead to economic and

physical deterioration of the surrounding neighborhood, making environmental repair of that neighborhood difficult and/or impossible. P.H.A. projects have detrimentally increased noise, traffic and congestion. Crime and drugs are rampant in every project.

Philadelphia public housing projects have the same effects, as detailed by Durchslag and Junger in H.U.D. and The Human Environment, at 58 IA.L.R. 805 (1973), "a decline and eventual disappearance of the sense of community, an increase in crime and violence, decrease in value of adjacent properties, and ugliness and incompatibility of design."

N.E.P.A. requires the above detailed effects to be considered by H.U.D. as they relate to the Whitman Project. H.U.D. did not consider any of them. A more flagrant violation of an act which embodies policies of the highest national importance cannot be imagined.

N.E.P.A. requires that H.U.D. consider alternatives to the proposed project. As defined by the Second Circuit, 42 U.S.C. 4332 (2), "requires study of alternatives available and where the objective of a major federal project can be achieved in one of two or more ways that will have differing impacts on the environment, a responsible agent is required to study, develop and describe each alternative for appropriate considerations since the objective is that no major federal project....be undertaken without intense

considerations of other more ecologically sound courses of action, including shelving the entire project or accomplishing the same result by entirely different means..." Trinity Episcopal School Corp. vs. Romney, 523 F. 2d. 88 (2nd Cir., 1975).

H.U.D. was aware of the substantial physical decay of projects and their surroundings and the desires of public housing tenants for public housing sites outside of projects. This knowledge of H.U.D. led Congress to create a new leased public housing program in The Housing and Community Development Act of 1974, 42 U.S.C. 1437(f). The concept was to cease building additional public housing projects so as to disburse public housing tenants in new and existing dwellings in existing neighborhoods so the public housing tenants would not be centered in one site. Senate Report 93-693, 1974 U.S. Code and Congressional and Administrative News, Volume 3 at page 4314-4317. The uncontradicted trial evidence showed that this program (Section 8 or scattered site) was preferred by all public housing tenants as safer, more decent and sanitary than project living. All housing experts who testified stated that scattered sites are safer, more decent and more sanitary than conventional public housing projects. In addition, the experts were unanimous in declaring that scattered site public housing fosters integration more than public housing projects.

In addition, P.H.A. has statutory authority to purchase and rehabilitate existing dwellings in scattered sites and rent them to public housing tenants. At 1971 costs, rehabilitation per unit is some $8,000.00. Therefore, for each Whitman unit built, three existing scattered site dwellings could be rehabilitated. For the same cost, 240 more families could move into scattered site units which they themselves state are preferable to project living. With some 13,000 people in Philadelphia on the P.H.A. waiting list, prudence may dictate that units are more important to national priorities than "Taj Mahals".

H.U.D. failed to consider any of the above described alternatives to this project, despite the statutory mandate which is and was of the highest national importance to so do.

H.U.D. concluded that no environmental statement was required. This conflicts with City of Davis vs. Coleman, 521 F. 2d. 661 (9th Cir., 1975), which held that since compliance with N.E.P.A. is a primary duty of every federal agency, that where "substantial questions are raised as to whether a project will have significant adverse impacts, it is hardly reasonable for an agency to conclude, prior to study, than an environmental impact statement is not required. Accordingly, an Environmental Impact Statement must be prepared whenever a project 'may cause a significant degrad-

ation of some human environmental factors."

With this background of both fact and law, Whitman pled and proved that no Environmental Impact Statement had been prepared and/or filed. This fact is uncontradicted. There was nothing more in the pleading or the presentation of evidence that Whitman could do in these circumstances. The District Court did not even consider in its opinion the applicability of N.E.P.A.. The Court of Appeals similarly dismissed the N.E.P.A. arguments stating that it had not been raised below and could not be raised there.

An issue is properly raised in the District Court by the pleadings, or evidence, or argument, or otherwise. There is no "magic word" requirement for raising issues below. DeLaval Turbine, Inc. vs. West India Industries, Inc., 502 F. 2d. 259 (3rd Cir., 1974); Beckman Instruments, Inc. vs. Coleman Instruments, Inc., 338 F. 2d. 573 (2nd Cir., 1964). Whitman met this criteria when it pled the fact of no Environmental Impact Statement and proved it at trial. This decision conflicts with those of the Second Circuit and the previous opinion of the Third Circuit.

The rule that issues not raised below cannot be raised on appeal is a rule of practice. "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review

would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules and procedure do not require sacrificing the rules of fundamental justice." Hormel vs. Helvering, 321 U.S. 552 (1941). The various Circuit Court of Appeals, pursuant to Hormel vs. Helvering, supra., have held that "important public questions", significant questions of general impact, and "the public interest" are all conditions under which issues not raised below will be considered and decide on Appeal. Brennan vs. Gilles and Cotting, 504 F. 2d. 1255 (4th Cir., 1974); Krouse vs. Sacramento, Inc., 479 F. 2d. 988 (9th Cir., 1973); Fleming vs. Goodwin, 165 F. 2d. 334 (8th Cir., 1948) cert. den. 334 U.S. 828 (1948); Evans vs. RRR Welding and Oil Field Maintenance Corp., 472 F. 2d. 713 (5th Cir., 1973); Empire Life Insurance Company of America vs. Valdak Corp., 468 F. 2d. 330 (5th Cir., 1972; O'Neill vs. U.S., 411 F. 2d. 139 (3rd Cir., 1969); Franki Foundation vs. Alger Rau and Associates, Inc., 513 F. 2d. 581 (3rd Cir., 1975); and Nuelson vs. Sorenson, 293 F. 2d. 454 (9th Cir., 1961).

This litigation meets each of the criteria which Courts of Appeals have held individually, require review of issues not presented below. N.E.P.A. creates obligations on H.U.D. of the highest national and public importance. H.U.D. is mandated by both the Congress and the decisions of

this Court to consider environmental factors in not only Whitman but the entire country. Whitman involves at least 13,000 citizens.

The extent to which H.U.D. can disregard an act of the Congress and decisions of this Court and the various Circuit and District Courts is, we respectfully submit, "an important public question", "a significant question[s] of general impact", and a question of "public interest."

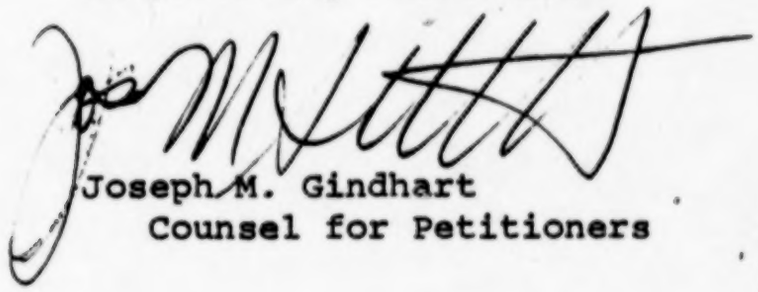
The decision of the Third Circuit conflicts with Hormel vs. Helvering, supra., and the decisions of the Third Fourth, Fifth, Eighth, and Ninth Circuits.

This litigation meets all the various criteria for certiorari.

CONCLUSION

For these reasons, A Writ of Certiorari should issue to review judgment and opinion of the Court of Appeals for the Third Circuit.

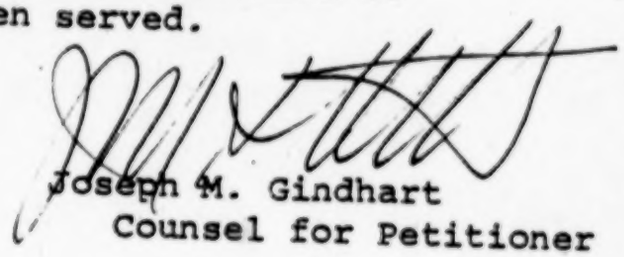
Respectfully submitted,



Joseph M. Gindhart
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this day of November, 1977, three copies of the Petition for Writ of Certiorari were hand-delivered to Jonathan M. Stein, Esquire, Sylvania House, Locust and South Juniper Streets, Philadelphia, Pennsylvania 19107, and Charles W. Bowser, Esquire, 1845 Walnut Street, Suite 1300, Philadelphia, Pennsylvania 19103, Co-Counsel for Respondents. I further certify that all parties required to be served have been served.



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